

AUG 01 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

DONI ESTUARDO VELIZ-VALDEZ,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-75906

Agency No. A90-517-418

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted July 24, 2006**

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

Doni Estuardo Veliz-Valdez, a native and citizen of Guatemala, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's ("IJ") order of removal. We have jurisdiction

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

pursuant to 8 U.S.C. § 1252. We review de novo, *Molina-Estrada v. INS*, 293 F.3d 1089, 1093 (9th Cir. 2002), and deny the petition for review.

The BIA correctly concluded that Veliz-Valdez was ineligible for cancellation of removal as a result of his conviction for possession for sale of a controlled substance. *See* 8 U.S.C. § 1101(a)(43)(B) (defining illicit trafficking in a controlled substance as an aggravated felony); 8 U.S.C. § 1229b(a)(3) (providing that the attorney general may cancel the removal of a permanent resident who has not been convicted of an aggravated felony). The later expungement of Veliz-Valdez's conviction pursuant to California Penal Code § 1203.4 did not render him eligible for cancellation of removal. *See Ramirez-Castro v. INS*, 287 F.3d 1172, 1175 (9th Cir. 2002) (state conviction expunged under California Penal Code § 1203.4 remains a conviction for purposes of federal law).

Veliz-Valdez's due process claim fails because the IJ's denial of his motion for a continuance did not inhibit Veliz-Valdez's ability to appeal the order of removal to the BIA. *See Colmenar v. INS*, 210 F.3d 967, 971 (9th Cir. 2000) (requiring an alien to demonstrate prejudice to prevail on a due process claim).

Veliz-Valdez's remaining contentions lack merit.

PETITION FOR REVIEW DENIED.